

No. 14106 ✓

United States
Court of Appeals
For the Ninth Circuit.

*See Vols.
2853
3029*

LEW WAH FOOK, as Guardian Ad Litem for
LEW SUEY YET, Also Known as LEW
THEW YUT,

Appellant,

VS.

HERBERT BROWNELL, JR., as Attorney Gen-
eral of the United States,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

FILED

JAN - 6 1954

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

BRENNAN & CORNELL,
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Los Angeles 13, Calif.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney;
CLYDE C. DOWNING,
MAX F. DEUTZ,
Assistants U. S. Attorney,
600 Federal Bldg.,
Los Angeles 12, Calif.

In the United States District Court in and for the
Southern District of California, Central Division

No. 14320-WB

LEW WAH FOOK as Guardian Ad Litem for
LEW SUEY YET, a/k/a LEW THEW YUT,

Plaintiff,

vs.

JAMES P. McGRANERY, as United States Attorney General,

Defendant.

PETITION TO ESTABLISH NATIONALITY;
DECLARATORY JUDGMENT UNDER
SECTION 503 OF THE NATIONALITY
ACT OF 1940

Comes now the plaintiff, Lew Suey Yet, a/k/a Lew Thew Yut, by his guardian ad litem, Lew Wah Fook, and complains of the defendant and for cause of action alleges:

I.

For the purpose of this action, Lew Wah Fook was appointed by the above-entitled Court and now is the guardian ad litem of plaintiff, Lew Suey Yet, a/k/a Lew Thew Yut;

II.

That said plaintiff is a true and lawful blood child of Lew Wah Fook who is a citizen of the United States; that as evidence of his United States citizenship, Lew Wah Fook holds Certificate of Identity

No. 47503 issued September 22, 1923, by the Immigration Office at San Francisco, California; that said Lew Wah Fook was born at Lung Uck Village, Hoy San District, China, on January 18, 1913 (CR 1-12-12); [2*]

III.

That the said Lew Wah Fook was admitted to the United States as the son of a Native, at San Francisco, California, when he arrived on August 23, 1923, on the SS President Taft (File No. 22492/6-10); that Lew Wah Fook has been a permanent resident of the United States since August 23, 1923; that said Lew Wah Fook has made two trips from the United States to China, as follows, to wit:

Departed from San Francisco, August 30, 1929, via SS President Jefferson, and returned to San Francisco in March, 1931, via SS President Pierce;

Departed from San Francisco, December 1, 1932, via SS President Coolidge, and returned to San Francisco on July 13, 1953, via SS President Hoover.

IV.

That the said Lew Wah Fook was first married to Huie Shee on November 10, 1929 (CR 18-10-10), at Lung Uck Village, Hoy San District, China; that such marriage was contracted in accordance with the marriage customs and ceremonies approved and legally recognized in China; that no official record

***Page numbering appearing at foot of page of original Certified Transcript of Record.**

of such marriage is available in China, so far as the said Lew Wah Fook is informed; that the plaintiff Lew Suey Yet, a/k/a Lew Thew Yet, was born September 9, 1935 (CR 24-8-12), at Lung Uck Village, Hoy San District, China; that the plaintiff, Lew Suey Yet, a/k/a Lew Thew Yut, is issue of the aforesaid marriage of Lew Wah Fook and Huie Shee; that the aforesaid marriage and the birth of said plaintiff was duly reported to the Immigration and Naturalization Service by the said Lew Wah Fook upon each and every occasion of his examination by that service;

That the said Lew Wah Fook was married a second time, after the death of his first wife on July 3, 1947, at Lung Uck Village, Hoy San District, China; to Huang Chee at Los Angeles, California, on [3] March 31, 1948. That said Lew Wah Fook and said Huang Chee are now living in Los Angeles, California.

V.

That the said Lew Wah Fook is and has been continuously since 1923, a resident within the Southern District of California, Central Division; that the petitioner, Lew Suey Yet a/k/a Lew Thew Yut, claims permanent residence in the Southern District of California, Central Division, and within the jurisdiction of this Court.

VI.

That the said Lew Wah Fook caused to be filed with the United States Department of Justice, on or about the 27th day of May, 1951, an application

for admission to the United States, at Terminal Island, San Pedro, California, in behalf of the plaintiff herein; that the said plaintiff was advised by the United States Department of Justice at Terminal Island, San Pedro, California, on the 7th day of July, 1952, that said petitioner's application for admission had been denied; that the said Lew Suey Yet a/k/a Lew Thew Yut claims that the refusal of the United States Department of Justice to permit his admission to the United States is an arbitrary and unreasonable refusal or denial of a right or privilege of a United States national.

VII.

That the defendant is the duly appointed, qualified and acting Attorney General of the United States; that the plaintiff's application for admission to the United States was denied by the United States Department of Justice on the 7th day of July, 1952; that the United States Department of Justice did, on the 7th day of July, 1952, deny the plaintiff a right or privilege as a national of the United States.

VIII.

That this complaint is filed and these proceedings are instituted against the defendant under Section 503 of the Nationality Act of 1940 (54 Stat. 1171, 1172, 8 U.S.C. 903), for a judgment declaring [4] the plaintiff to be a national of the United States.

IX.

That the plaintiff has never committed any act of or executed any instrument of expatriation nor

renounced his United States citizenship; that the plaintiff is entitled to be declared a national of the United States.

X.

That the plaintiff, Lew Suey Yet, a/k/a Lew Thew Yut, claims to be a United States citizen and/or national, such citizenship and/or nationality having been acquired pursuant to the provisions of Section 1993, Revised Statutes of the United States, as amended by the Act of May 24, 1934, and Section 201 (g) of the Nationality Act of 1940 (8 U.S.C.A. 601 (g)).

Wherefore, plaintiff prays for judgment declaring him to be a national of the United States and for such other and further relief as may be just and proper.

BRENNAN & CORNELL,

By /s/ BERNARD BRENNAN,

Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed July 10, 1952 [5]

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant, James P. McGranery, as United States Attorney General, through his attorneys, Walter S. Binns, United States Attorney for the Southern District of California, and Clyde C. Downing and Arline Martin, Assistant United

States Attorneys for the Southern District of California, and in answer to plaintiff's Complaint herein, admits, denies and alleges as follows:

I.

Admits the allegations contained in Paragraph I of plaintiff's Complaint.

II.

Referring to the allegations contained in Paragraph II of said Complaint, admits that Lew Wah Fook holds Certificate of Identity No. 47503 issued September 22, 1923, by the Immigration and Naturalization Service at San Francisco, California, and admits that said Lew Wah Fook was born at Lung Uck Village, Hoy San District, China, on January 16, 1916 (CR 4-12-12); denies each and every other allegation contained in Paragraph II of said Complaint. [11]

III.

Referring to the allegations contained in Paragraph III of said Complaint, defendant has no knowledge or information sufficient to form a belief as to whether or not Lew Wah Fook has been a permanent resident of the United States since August 23, 1923, and on that ground, denies said allegation; admits each and every other allegation in said Paragraph III contained except alleges that said Lew Wah Fook returned to San Francisco from China on April 5, 1931, instead of March, 1931, and that he departed from San Francisco December 2, 1932, and returned to San Francisco July 31, 1935.

IV.

Referring to the allegations contained in Paragraphs IV and V of said Complaint, defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in said Paragraphs IV and V, and on that ground, denies said allegations.

V.

Referring to the allegations contained in Paragraph VI of said Complaint, denies each and every allegation contained therein, but admits that the defendant as head of the Department of Justice, through its agent, the Immigration and Naturalization Service, on June 28, 1951, refused to admit plaintiff to the United States on the grounds that he was not a citizen of the United States, after a hearing by a Board of Special Inquiry, and alleges that on July 1, 1952, the Board of Immigration Appeals dismissed plaintiff's appeal from that decision.

VI.

Referring to the allegations contained in Paragraph VII of said Complaint, admits that the defendant is the duly appointed, qualified and acting Attorney General of the United States, and the head of the Department of Justice; denies each and every other allegation in said allegation contained, and refers again to defendant's allegations contained in Paragraph V above.

VII.

Referring to the allegations contained in Paragraph VIII of said Complaint, defendant neither

admits nor denies the allegations contained therein, the same being a conclusion of law. [12]

VIII.

Referring to the allegations contained in Paragraphs IX and X of said Complaint, denies each and every allegation contained in said Paragraphs IX and X.

For a Further, Separate and Second Defense Defendant Alleges:

I.

The Complaint of plaintiff fails to state a claim upon which relief can be granted.

Wherefore, defendant prays for a judgment dismissing said Complaint and denying the relief prayed for therein.

WALTER S. BINNS,

United States Attorney;

CLYDE C. DOWNING,

Assistant U. S. Attorney,

Chief of Civil Division;

/s/ ARLINE MARTIN,

Assistant U. S. Attorney,

Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed August 11, 1952. [13]

[Title of District Court and Cause.]

STIPULATION FOR SUBSTITUTION OF
HERBERT BROWNELL, JR., AS UNITED
STATES ATTORNEY GENERAL, AS
PARTY DEFENDANT

It Is Hereby Stipulated, pursuant to the provisions of Rule 25 (d), Federal Rules of Civil Procedure, that Herbert Brownell, Jr., as United States Attorney General, be substituted as party defendant in the above-entitled case.

Dated: April 21, 1953.

BRENNAN & CORNELL,
By /s/ BERNARD BRENNAN,
Attorneys for Plaintiff.

WALTER S. BINNS,
United States Attorney;

CLYDE C. DOWNING,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ HARRY R. TALAN,
Acting Assistant U. S. Attorney, Attorneys for
Defendant.

It Is So Ordered:

This 21st day of April, 1953.

/s/ HARRY C. WESTOVER,
United States District Judge.

[Endorsed]: Filed April 21, 1953. [16]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled case having come on for trial on April 21, 1953, and having been tried on April 21 and April 22, 1953, before the Honorable Harry C. Westover, Judge Presiding, without a jury, the plaintiff appearing by his attorney, Bernard Brennan, and the defendant appearing by his attorneys, Walter S. Binns, United States Attorney; Clyde C. Downing, Assistant United States Attorney, Chief, Civil Division; and Harry R. Talan, Acting Assistant United States Attorney, and evidence having been introduced on behalf of the plaintiff, and the defendant and the Court having considered the same, and having heard the arguments of counsel, and being advised in the premises, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I.

That Herbert Brownell, Jr., is the duly appointed and qualified and acting Attorney General of the United States of America, and as such, is the head of the [18] Department of Justice, and in such capacity is the executive head of said United States Department of Justice, of which the Immigration and Naturalization Service is a Department.

II.

That on or about June 28, 1951, a Board of Spe-

cial Inquiry of said Immigration and Naturalization Service ordered the plaintiff herein excluded from the United States on the ground that said plaintiff is not a citizen of the United States, and was not in possession of a valid immigration visa or of a passport or documents in lieu of a passport issued by the country to which he owes allegiance.

III.

That Lew Wah Fook, alleged father of the plaintiff herein, was on or about September 23, 1923, admitted to the United States from China, as the son of a native and was issued Certificate of Identity No. 47503 by the Immigration and Naturalization Service at San Francisco, California.

IV.

That the plaintiff herein claims permanent residence in the Southern District of California, Central Division.

V.

That the plaintiff herein was permitted to travel to the border of the United States by virtue of Travel Affidavit No. 2694 and was there, on or about May 26, 1951, taken into custody by the Immigration and Naturalization Service and held in exclusion status pending determination of his status by a Board of Special Inquiry.

VI.

That the Board of Special Inquiry of the Immigration and Naturalization Service held at San Pedro, California, on June 28, 1951, determined that the plaintiff herein was not a citizen of the

United States, and was not admissible to the United States as such.

VII.

That on July 1, 1952, the Board of Immigration Appeals affirmed the decision that the plaintiff herein was not a citizen and should be excluded [19] from the United States; that thereafter, on July 10, 1952, plaintiff herein filed this judicial proceeding to have his claim of citizenship determined by this Court.

VIII.

That the credibility of the witness Lew Wah Fook, alleged father of the plaintiff herein, has been so impeached that, as a result, the Court does not believe the testimony of the said plaintiff, the witness Lew Wah Fook, or other witnesses, and there is insufficient credible evidence to support plaintiff's claim that he is a citizen of the United States.

IX.

That the plaintiff herein was born in China, but that said plaintiff is not the son of Lew Wah Fook, and is not a citizen of the United States.

Conclusions of Law

I.

The jurisdiction of this Court in the above-entitled action is pursuant to the Act of October 14, 1940, Ch. 876, Title I, Subch. 5, Section 503, 54 Stat. 1171 (8 U.S.C. 903).

II.

The decision that plaintiff herein was not a citizen

and should be excluded from the United States was affirmed by the Board of Immigration Appeals on July 1, 1952, and thereafter on July 10, 1952, the plaintiff filed this judicial proceeding to have his claim of citizenship determined by this Court.

III.

The burden is on the plaintiff herein to establish his claim to United States citizenship, and the said plaintiff has failed to sustain such burden, and the Court concludes that the plaintiff Lew Suey Yet, a/k/a Lew Thew Yut, is not a national or citizen of the United States, and is not a son of Lew Wah Fook.

IV.

Judgment should be entered in favor of the defendant and against the plaintiff in the above-entitled action, dismissing the plaintiff's [20] Complaint and Cause of Action and adjudging that said plaintiff is not a citizen of the United States and directing that said plaintiff be excluded from the United States and returned to China, and that costs be awarded the defendant in this action.

Dated: May 12th, 1953.

/s/ HARRY C. WESTOVER,
U. S. District Judge.

Presented by:

/s/ HARRY R. TALAN,
Acting Asst. U. S. Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed May 12, 1953. [21]

In the United States District Court in and for the
Southern District of California, Central Division

No. 14320-HW

LEW WAH FOOK, as Guardian Ad Litem for
LEW SUEY YET, a/k/a LEW THEW YUT,

Plaintiff,

vs.

HERBERT BROWNELL, JR.,

Defendant.

JUDGMENT

The above-entitled case having come on for trial on April 21, 1953, and having been tried on April 21 and April 22, 1953, before the Honorable Harry C. Westover, Judge Presiding, without a jury, the plaintiff appearing by his attorney, Bernard Brennan, and the defendant appearing by his attorneys, Walter S. Binns, United States Attorney; Clyde C. Downing, Assistant United States Attorney, Chief, Civil Division; and Harry R. Talan, Acting Assistant United States Attorney, and the Court having considered and heard the arguments of counsel, and the Court having considered the same and the cause having been argued and submitted to the Court for its decision, and the Court having heretofore made and filed its Findings of Fact and Conclusions of Law and having ordered that a Judgment be entered in accordance therewith:

Now, Therefore, It Is Ordered, Adjudged and Decreed:

I.

Judgment is hereby entered for the defendant and against the plaintiff in the above action and it is hereby adjudged that the Complaint and cause [22] of action shall be and the same are hereby dismissed and the plaintiff, Lew Suey Yet, a/k/a Lew Thew Yut, is not a citizen or national of the United States.

It is hereby directed that said plaintiff be excluded from the United States and returned to China, and that the defendant recover his costs in this action.

Costs taxed at \$20.00.

Dated: This 12th day of May, 1953.

/s/ HARRY C. WESTOVER,
Judge, United States District
Court.

Receipt of copy acknowledged.

[Endorsed]: Filed May 12, 1953.

Docketed and entered May 14, 1953. [23]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT OF
APPEALS UNDER RULE 73 (B)

Notice is Hereby Given that:

Lew Wah Fook as Guardian Ad Litem for Lew Suey Yet, also known as Lew Thew Yut, plaintiff

above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on May 14, 1953.

Dated: July 6, 1953.

BRENNAN & CORNELL,
By /s/ WM. E. CORNELL,
Attorneys for Plaintiff.

[Endorsed]: Filed July 10, 1953. [24]

[Title of District Court and Cause.]

ORDER EXTENDING TIME ON APPEAL

Upon motion by counsel for plaintiff, and there being no objection from counsel for the defendant, and good cause appearing therefore;

It is Ordered that the time to file the record on appeal is hereby extended 90 days from the Notice of Appeal herein.

Dated: August 19, 1953.

/s/ BEN HARRISON,
United States District Judge.

[Endorsed]: Filed August 1, 1953. [28]

In the United States District Court, Southern
District of California, Central Division

No. 14320-HW Civil

LEW WAH FOOK, as Guardian Ad Litem for
LEW SUEY YET, Also Known as LEW
THEW YUT,

Plaintiff,

vs.

HERBERT BROWNELL, as United States At-
torney General,

Defendant.

Honorable Harry C. Westover, Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

April 21, 1953

Appearances:

For the Plaintiff:

BRENNAN & CORNELL, By
BERNARD BRENNAN, ESQ.,
453 South Spring Street,
Los Angeles 13, California.

For the Defendant:

WALTER S. BINNS,
United States Attorney, By
HARRY R. TALAN, ESQ.,
Assistant United States Attorney.

April 21, 1953—2:00 P.M.

The Clerk: Trial in the case of Lew Wah Fook vs. McGranery. I don't believe in this case there has been a substitution as yet.

Mr. Brennan: We have the substitution stipulation signed, your Honor. I assume your Honor will wish the usual exclusion?

The Court: Yes. I want all the witnesses excluded except the plaintiff and the party on the stand.

May I suggest to counsel I have a criminal case set for trial on Thursday. If you don't finish this case by Wednesday night, it will be necessary to go over to next week some time.

Mr. Brennan: I will do the best I can, your Honor.

The Court: I know you don't want to be here the first of next week.

Mr. Brennan: No. I don't.

The Court: Swear the interpreter.

(Whereupon, George Lee was sworn to interpret from English to Chinese and Chinese to English.)

Mr. Brennan: We will call Lew Wah Fook. [3*]

LEW WAH FOOK

called as a witness herein by and on behalf of the plaintiff, having been first duly sworn, was ex-

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Lew Wah Fook.)

amined and testified through the interpreter as follows:

The Clerk: Will you be seated and state your name, please?

The Witness: Lew Wah Fook.

Direct Examination

By Mr. Brennan:

Q. Where do you reside?

A. 115 Vermont Street, Los Angeles.

Q. How long have you been a resident of Los Angeles County last past? A. 1935 till now.

Q. Where were you born?

A. Canton, Toy Shan, China.

A. What village? A. Lung Ock, O-c-k.

Q. Would that also be Lung Uck phonetically?

The Interpreter: It could be U-c-k or O-c-k, either would be right.

Q. (By Mr. Brennan): When were you born?

A. First year CR, 12th month, 12th day. [4]

Q. Is that the first or the fourth year?

A. First year.

Mr. Brennan: What is that translated in the English calendar?

The Interpreter: January 18, 1913.

Mr. Brennan: Is that January 18?

The Interpreter: January 18, 1913.

Mr. Brennan: Your Honor, at this time may we amend the petition on page 1, lines 31 and 32, by

(Testimony of Lew Wah Fook.)

interlineation to conform to the proof, so that the birth date is January 18, 1913, CR 1-12-12?

The Court: It may be amended.

Mr. Brennan: Counsel, is there any contention raised that the witness is not a citizen of the United States?

Mr. Talan: No, we raise no contention.

Mr. Brennan: It is conceded that he is, is that right?

Mr. Talan: We will concede that.

Q. (By Mr. Brennan): When did you first come to the United States?

A. CR, 12, 6th month.

The Interpreter: 1923, latter part of July and the first part of August.

Q. (By Mr. Brennan): Where did you enter the United States? A. San Francisco. [5]

The Court: It seems to me the best evidence is the certificate that was filed with the immigration authorities.

Did you file a certificate or file a statement?

Mr. Brennan: There was a certificate of identity issued at that time.

The Court: I know, but how about the memorandum he filed with the immigration authorities?

Mr. Brennan: I don't think they filed that type of memorandum on the first entry. It is for the trips. After the entry, when he makes a trip, but not for the original entry.

The Court: All right.

(Testimony of Lew Wah Fook.)

Q. (By Mr. Brennan): You arrived by boat, did you? A. Yes.

Q. Did you make trips back to China?

A. I made two trips.

Q. When did you depart for the first trip?

A. CR 18, which is 1929, some time in August.

The Court: May I ask a question? How old were you when you made this first trip back to China?

The Witness: 18.

The Court: By Chinese reckoning?

The Witness: Chinese reckoning. [6]

Q. (By Mr. Brennan): When did you return?

A. CR 20, 2nd month, 16th day, approximately.

Mr. Brennan: What is that?

The Interpreter: 1931, April 3.

Q. (By Mr. Brennan): When did you depart on the second trip? A. In November, 1932.

Q. When did you return? A. May, 1935.

Q. Did you make both of those trips both ways by boat and each time leave and return from San Francisco? A. Yes, each time.

Q. Were you married in China? A. Yes.

Q. When were you married?

A. CR 18, 10th month.

The Interpreter: 1929, November.

Q. To whom were you married?

A. Huie Shui Yee.

Mr. Brennan: Could that be spelled H-u-i-e S-h-e-e, phonetically?

The Interpreter: Yes.

(Testimony of Lew Wah Fook.)

Q. (By Mr. Brennan): Were you married in the same village where you were [7] born?

A. Yes, same village.

Q. Was any official record made of the marriage so that that would be available now?

A. By Chinese custom, there is no official record.

Q. Were you married on this occasion in accordance with the Chinese marriage custom and ceremony?

A. Yes.

Q. Did you have any children issue of that marriage?

A. Yes.

Q. What is your oldest child's name?

A. Lew Mon Soong.

Q. When was he born?

A. CR 19, 9th month, 9th day.

The Interpreter: 1930, November 9.

Q. That was a son? A. Yes.

Q. What is the name of your next boy?

A. Lew Mon Hing or Hung.

Q. Is that a son? A. Yes.

Q. When was he born?

A. CR 22, 11th month, 15th day.

The Interpreter: 1933, December 2.

Q. What is your next child's name? [8]

A. Lew Suey Yut.

The Interpreter: L-e-w S-u-y Y-u-t.

Q. Is that a son? A. Yes.

Mr. Brennan: Can that be spelled S-u-e-y or S-u-e-y and T-h-e-w, as well?

The Interpreter: Yes.

(Testimony of Lew Wah Fook.)

Mr. Brennan: And can the other be spelled Y-u-t or Y-e-t?

The Interpreter: Yes.

Q. (By Mr. Brennan): When was he born?

A. CR 24, 8th month, 12th day.

The Interpreter: September 9, 1935.

Q. Do you have any other children born of that marriage? A. Yes.

Q. What is the name of the other child, the next child? A. Lew Mon Tang, T-a-n-g, or T-i-n-g.

Q. Is that a son? A. Yes.

Q. When was he born?

A. CR 35, 11th month, 24th day.

Q. When was that?

The Interpreter: That is January 6, 1937. [9]

Mr. Brennan: 1937 or 1947?

The Interpreter: I am sorry. That is my error. December 17, 1946.

Q. (By Mr. Brennan): Were any other children born of that marriage? A. That's right.

Q. Is your wife, Huie Shee, still living?

A. No.

Q. When did she die?

A. She died CR 36, about the 5th month.

Q. Is that 5th month by Chinese calendar?

A. Chinese.

The Interpreter: The latter part of June or the early part of July, 1947.

Q. Are all four sons that you mentioned still living? A. Yes.

Q. Where is your oldest son, Lew Mon Soong?

(Testimony of Lew Wah Fook.)

A. Here in Los Angeles.

The Court: Has he been admitted?

Mr. Brennan: Yes, your Honor. We will use him as a witness later.

Q. He came into court with you today and was sent to the witness room? A. Yes.

Q. Where is Lew Mon Hing? [10]

A. Here, also.

Q. Did he come into court with you and go to the witness room a little while ago? A. Yes.

Q. Where is Lew Suey Yet?

A. He is sitting at the table.

Mr. Brennen: May the record show the witness is looking in the direction of counsel table and identified the plaintiff? I will ask him to stand.

(Man at counsel table standing.)

Q. Is this Lew Suey Yet that you identified as your son? A. Yes.

Q. Where is Lew Mon Tang?

A. In China, in the village.

Q. Did you remarry?

A. Yes, I remarried.

Q. And when? A. March 31, 1948.

Q. Where were you married; in the same village where you were born?

A. No. In Los Angeles.

Q. Where did your first wife die?

A. In our village, in China.

Q. Were all four of your sons born in the village where [11] you were born?

(Testimony of Lew Wah Fook.)

A. Yes, all the same.

Q. To whom are you now married?

A. Wong Chee, W-o-n-g C-h-e-e.

Mr. Brennan: Could that be spelled H-u-a-n-g?

The Interpreter: Yes.

Mr. Brennan: May we have this document marked for identification?

The Court: It may be marked Plaintiffs' Exhibit 1 for identification only.

The Clerk: So marked.

(The document referred to was marked as Plaintiff's Exhibit No. 1 for identification.)

Mr. Brennan: And the next document, also.

The Court: Plaintiff's Exhibit 2 for identification only.

The Clerk: So marked.

(The document referred to was marked as Plaintiff's Exhibit No. 2 for identification.)

Q. (By Mr. Brennan): I show you Plaintiff's Exhibit No. 1 for identification and ask you if this is your signature appearing on the line entitled "Signature Applicant" at the bottom of the page.

A. Yes. It looks like my signature. [12]

Q. On your return to the United States on your first trip to China, did you come back on the President Pierce? A. Yes.

Q. At the time of your entry into San Francisco, did you make a statement to an officer of the United

(Testimony of Lew Wah Fook.)

States Immigration Service at the time of your entry into San Francisco?

A. Yes, while I was still on board.

Q. Did you give that officer the information that your name was Lew Wah Fook and also Lew Choon Hin?

A. Yes.

Q. Is Lew Choon Hin your married name?

A. Yes.

Q. Did you give them the information that you were married once to Huie Shee, CR 18-10-10, natural feet, Lung Ock Village, S.N.D.?

A. Yes.

Q. Did you give them the information that you had one child, one son, no daughters, and that your wife was not then pregnant?

A. Yes.

Q. Did you also give them the information that that son's name was Lew Moon Sheung, age 2, sex M, birth date CR 19-9-19, Lung Ock Village?

A. Yes. [13]

Q. Was that information that you gave them as I have outlined it correct?

A. That was correct.

Mr. Brennan: May we offer in evidence Plaintiff's Exhibit 1, your Honor?

Mr. Talan: No objection.

The Court: It may be admitted.

The Clerk: So marked, Plaintiff's Exhibit No. 1 in evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 1.)

(Testimony of Lew Wah Fook.)

Q. (By Mr. Brennan:) I show you Plaintiff's Exhibit No. 2 for identification bearing date July 31, 1935, and ask you if that is your signature at the bottom of the page? A. Yes.

Q. On your return from your second trip, did you come in on the President Hoover?

A. Yes.

Q. And on your entrance were you interviewed and did you give information to an officer of the United States Immigration and Naturalization Service in San Francisco, or in the Bay? A. Yes.

Q. And did you give them the information, in addition [14] to your name and the fact of your marriage, that at that time you had two children, being both sons, no daughters, and that your wife was pregnant seven months? A. Yes.

Q. Did you give them the information that the two sons' names were Lew Moon Seung, age 6, and Lew Moon Hin, age 3, both under sex M, and the birth date of the first being CR 19-9-19, at Lung Ock Village, and the second being CR 22-12-5, at Lung Ock Village? A. Yes.

Q. Is that information correct as to the birth date of your second son, Lew Mon Hin, or was it CR 22-11-15? A. CR 22-12-5, was correct.

Mr. Talan: Mr. Brennan, you might ask him about the older boy, too. There is a variance in those dates.

Q. (By Mr. Brennan): Is this date correct, CR 19-9-19, or is it CR 19-9-9?

A. 19 is correct.

(Testimony of Lew Wah Fook.)

Mr. Brennan: We'd better get the translation this time of CR 19-9-19.

The Interpreter: November 9, 1930.

Mr. Brennan: I thought you gave that as CR 19-9-9?

The Interpreter: Originally, he gave it as CR 19-9-9.

Mr. Brennan: Yes, that is correct, and the interpretation of that was November 9, 1930. [15]

The Interpreter: Yes, that's right.

Mr. Brennan: The Interpreter has given the interpretation of CR 19-9-19 as November 9, 1930, also.

The Court: Is there any difference here in 10 days?

The Interpreter: CR 19-9-19 is November 9, 1930.

Mr. Brennan: What is CR 19-9-9?

The Interpreter: October 30, 1930.

Mr. Brennan: Then the original interpretation of CR 19-9-9 should have been October 30, 1930, is that correct, Mr. Interpreter?

The Interpreter: That is correct.

Mr. Brennan: May we have the interpretation of CR 22-12-5?

The Interpreter: CR 22-12-5 is January 19, 1934.

Q. (By Mr. Brennan): Was the information you furnished to the officer of the Immigration and Naturalization Service that I have just referred to correct? A. Yes.

(Testimony of Lew Wah Fook.)

Mr. Brennan: We offer into evidence at this time Plaintiff's Exhibit 2.

The Court: It may be received.

The Clerk: So marked, Plaintiff's Exhibit 2 in evidence. [16]

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 2.)

The Court: May I inquire, do you claim that the information upon the memorandum is wrong or the testimony of the witness as given here is wrong?

Mr. Brennan: The witness has now said that the information on the memorandum is correct and he was in error on the dates that he gave in his earlier testimony.

The Court: Today?

Mr. Brennan: That is correct.

The Court: In other words, he is saying the information he gave back in 1931 and 1935 is correct and if there is a mistake, it is in his testimony today?

Mr. Brennan: That is what he has testified to.

Q. How old was your son, Lew Mon Soong, when you left China on your return from your first trip?

A. By Chinese reckoning, it is around two years old.

The Court: Just a minute. Let me get something straight. The plaintiff is No. 3 child, is that correct?

Mr. Brennan: That is correct.

(Testimony of Lew Wah Fook.)

The Court: He says now when he left China on his first trip, the plaintiff was two years old.

Mr. Brennan: That checks.

The Court: Is he talking about the plaintiff?

Mr. Brennan: No. I asked for Lew Mon Soong by name, [17] your Honor.

The Court: All right. That is my mistake then.

Q. (By Mr. Brennan): When did you next see Lew Mon Soong?

A. On my next trip to China, English date 1932.

The Court: How old was your boy at that time, when you returned to China?

The Witness: Approximately three.

The Court: You mean to tell me that your first trip to China, you came over to this country, remained here approximately a year, and then went back to China?

The Witness: A little over a year.

The Court: And when you went back to China, your boy was then three years old?

The Witness: Chinese reckoning, three approximately three.

The Court: On these ages, when he left China, the boy was two years old, he said. Is that in Chinese reckoning?

The Witness: Yes, Chinese reckoning.

The Court: And when he came back, the boy was three years old, and that is Chinese reckoning?

The Witness: About three, three or four.

The Court: All right.

Q. (By Mr. Brennan): In Plaintiff's Exhibit 2, you state when you returned [18] from China,

(Testimony of Lew Wah Fook.)

your son Lew Mon Soong was six years old. Was that by Chinese reckoning?

A. Are you referring to the first trip or the second trip?

Q. When you came back to the United States on the second trip.

The Court: You said a minute ago on the first trip.

Mr. Brennan: I withdraw the question.

The Court: There's something wrong somewhere. Let's get this thing straightened out.

Q. (By Mr. Brennan): When you returned from China on your second trip in 1935, you state on Plaintiff's Exhibit 2, that your oldest son, was then six years old. Was that according to Chinese count? A. Yes.

Q. Is that correct as to his approximate age?

A. Yes.

The Court: Now, may I ask a question? How long did you stay in China on this first trip?

The Witness: On my first trip, a little over a year, a year and few months.

The Court: You said a minute ago when you left China on your first trip, that the boy was approximately two years old, Chinese. When you returned to China, he was approximately three years old Chinese. You said that you remained in China [19] approximately a year. Now, you say that when you—let's withdraw that and let's start all over.

You say that when you returned to China the second time that you—well, let's go ahead. I am all confused. Something is wrong here somewhere.

(Testimony of Lew Wah Fook.)

Mr. Brennan: I know what it is, your Honor.

The Court: Something is certainly wrong.

Q. (By Mr. Brennan): You remained in China on your first trip a little over a year, is that correct?

A. Yes.

Q. On your second trip to China, you remained there approximately two and a half years, is that correct?

A. Yes, over two years.

Q. And your oldest boy, was two years old by Chinese reckoning when you left the first time, is that correct?

A. Yes.

Q. When you returned to China on your second trip, that boy was approximately three years old, or you said later three or four years old, is that correct?

A. Yes.

Q. And then when you left to come home at the end of the second trip, that boy, according to Chinese count, was approximately six years old, is that correct?

A. Yes. [20]

The Court: How long did you stay in China on the second trip?

The Witness: A little over two years, approximately two and a half years.

Mr. Brennan: Does that give your Honor the information?

The Court: That's all right. I had it all mixed up here.

Q. (By Mr. Brennan): When did you next see Lew Mon Soong?

A. Since '35?

Q. Yes.

A. About in February in 1946.

Q. Where did you see him in February, 1946?

(Testimony of Lew Wah Fook.)

A. In the village at my house.

The Court: How old was the boy, at that time?

The Witness: About 17 or 18.

The Court: I understand you didn't see this boy, from the time he was six years old until he was 17 or 18?

The Witness: No. That's right.

Q. (By Mr. Brennan): How did you happen to be in the village in February, 1946?

A. I was with the United States Army at that time and I received a 90-day leave, and during that leave I went back to the village in China. [21]

Q. Approximately when did you get to the village on that trip;

The Court: What do you mean? He said he got there in February, 1946. You mean what time of the day or approximately what time of the month?

Q. (By Mr. Brennan): Approximately what time of the year and month did you arrive at the village on the 1946 trip?

A. CR 35, the first month, the 15th day.

The Interpreter: February 6, 1946.

Q. (By Mr. Brennan): How long did you remain in the village?

A. Approximately 80 days.

Q. With whom was Lew Mon Soong living at that time?

A. With my grandmother, with my wife, my brothers and sisters, and my other sons.

Q. Was that in the same house in which you had left him, when you left the village in CR 19 and

(Testimony of Lew Wah Fook.)

also when you left the village in CR 22? Withdraw that.

Was that in the same house you left your son in when you returned from your first trip and when you returned from your second trip?

A. The same house.

Q. When did you next see Lew Mon Soong?

A. When he came to the United States, 1951, when he arrived [22] in the United States.

Q. Did you recognize the Lew Mon Soong that came into court with you as the same person that you saw when he came to the United States in 1951, as the Lew Mon Soong you saw in 1946, in the village? A. Yes.

Q. And the boy you saw and knew as Lew Mon Soong in 1946, did you recognize him as the boy that you left in the village on your return on your second trip who was then six years old?

A. Yes.

Q. How old was Lew Mon Hing when you returned to the United States on your second trip?

A. About three years old.

Q. By Chinese count? A. Yes.

The Court: Mr. Brennan, I have a matter with the District Attorney's office, so we will recess this case until 3:15.

(Other court matters were taken up.)

The Court: You may proceed.

Q. (By Mr. Brennan): How old was Lew Mon Hing when you returned on your second trip?

(Testimony of Lew Wah Fook.)

A. About three. [23]

Q. When did you next see him?

A. CR 35, first month, approximately 15th day.

Q. Was that the same time you saw your oldest son, that you have earlier testified to?

A. Yes, the same.

Q. That was during your 90-day leave when you were in the United States Army?

A. Yes, same time.

Q. Where were you stationed when you were granted that 90-day leave? A. In Shanghai.

Q. How long were you in the Army overseas? Withdraw that. How long were you in the Army?

A. I went in the Army in July, 1943, and I left—I was discharged April, 1947.

The Court: How old was this No. 2, when you saw him in the village in 1946?

The Witness: Approximately 14.

Q. (By Mr. Brennan): Was he living in the same house with your oldest son?

A. Yes, the same.

Q. Is that the same house where you left him when he was three years old? A. Same. [24]

Q. When did you next see your second son?

A. 1951, when he arrived in Los Angeles.

Q. Did you recognize him as the same boy you saw in China in February, 1936, in the village?

A. Yes, I recognized him.

Q. Did you recognize him as the same boy you saw at three years of age, when you left the village

(Testimony of Lew Wah Fook.)

on the return to the United States on your second trip? A. Yes.

Q. When did you first see your son Lew Suey Yet?

A. CR 35, first month, approximately the 15th day.

Q. Was that on the same trip when you were in the United States Army on your 90-day leave?

A. Yes.

Q. Was he living in the same house where your two older sons were living, that you testified to?

A. Yes, all the same.

Q. How old was he when you saw him on that occasion? A. Approximately 10.

Q. When did you next see him?

A. In 1951, when he arrived in the United States.

Q. That was the same time you saw your two older boys, is that correct?

A. Yes, all the same.

Q. They all three arrived at the same time at the same [25] time, at the same port of entry, did they? A. Yes, the same.

The Court: May I ask a question?

Mr. Brennan: Yes, your Honor.

The Court: All these three boys arrived in this country at the same time?

Mr. Brennan: Yes.

The Court: Evidently there was a hearing. Did the government admit the No. 1 and the No. 2 boys?

Mr. Brennan: Yes.

(Testimony of Lew Wah Fook.)

The Court: And they turned the No. 3, down?

Mr. Brennan: That is correct.

The Court: All right.

Q. (By Mr. Brennan): Did you recognize the boy you saw in 1951, Lew Suey Yet, you have identified as your son, as the same boy you saw at age 12, in 1946, in the village? A. The same.

The Court: Has this witness got a certificate of identity; I wonder if I could look at it.

The Witness: Yes.

Mr. Brennan: May that be marked for identification, your Honor, as long as you are looking at it?

The Court: I wanted to compare the picture on the certificate of identity with the picture of the plaintiff and see [26] whether or not there was any family resemblance. Ask the plaintiff to turn his head this way.

Do you want this marked?

Mr. Brennan: Yes, as long as your Honor has looked at it, and we will substitute a photostatic copy.

The Court: It may be marked Plaintiff's Exhibit No. 3.

The Clerk: In evidence, your Honor?

The Court: No, for identification.

The Clerk: So marked, Plaintiff's Exhibit 3 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 3 for identification.)

Mr. Brennan: Cross-examine.

Mr. Talan: Your Honor, we wish to reserve our cross-examination of this witness.

The Court: All right. You may step down.

Mr. Brennan: Now, will you call in the oldest boy. [27]

LEW MON SOON

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: Your name, please?

The Witness: Lew Mon Soon.

The Interpreter: L-e-w M-o-n S-o-o-n.

Mr. Brennan: Can that also be S-o-o-n-g?

The Interpreter: Yes.

Direct Examination

By Mr. Brennan:

Q. Where were you born? A. In China.

Q. And when?

A. CR 19, 9th month, 19th day.

The Interpreter: November 19, 1930.

Q. (By Mr. Brennan): Where in China were you born? A. Lung Uck Lee.

Q. When did you come to the United States?

A. What date, do you mean? The date I left from China?

Q. What date did you arrive in the United States? A. May 27, 1951. [28]

(Testimony of Lew Mon Soon.)

Q. From what Chinese port or port in the Orient did you leave? A. In Hong Kong.

Q. How long were you in Hong Kong before you left for the United States?

A. A little over a year.

Q. Did you go to Hong Kong from the village at the time—withdraw that. When you first went to Hong Kong about a year before you left for the United States, did you go direct from the village?

A. Yes.

Q. Up to the time that you left the village for Hong Kong on this occasion, did you live in the village from the date of your birth until you left for Hong Kong? A. Yes.

Q. Who went to Hong Kong with you?

A. My brothers went with me, my No. 1 brother below me and my No. 2 brother below me.

Q. That would be Lew Mon Hing and Lew Suey Yet? A. Yes.

Q. Did they stay with you in Hong Kong until you left for the United States? A. Yes.

The Court: Did you live in the same house or room?

The Witness: In a store. [29]

The Court: Did any of you work while you were in Hong Kong?

The Witness: We all slept there. We didn't work in the store.

The Court: Did you work anywhere?

The Witness: No, we didn't work in Hong Kong.

(Testimony of Lew Mon Soon.)

The Court: All right.

Q. (By Mr. Brennan): Who is your father?

A. Lew Wah Fook.

Q. Did you come into court with him today and was he the one who went into the witness room just as you came into court now?

A. Yes, that is my father.

Q. Who is your mother?

A. Huie Shee Yee.

Q. Is your mother living?

A. My mother passed away.

Q. Up until the time she died, did you and your brothers, Lew Mon Hing and Lew Suey Yet, live together?

A. Yes, before she passed away.

The Court: When did your mother die?

The Witness: CR 35.

The Court: Was she living in the home in the village, when she died? [30]

The Witness: Yes, in the village.

The Court: Were you living in the same house?

The Witness: Same house.

The Court: Were your two brothers living in the same house?

The Witness: Yes, same house.

The Court: What did your mother die of?

The Witness: Dysentery.

The Court: All right.

Q. (By Mr. Brennan): Where is your brother, Lew Mon Hing?

A. He is in the United States.

(Testimony of Lew Mon Soon.)

Q. Is he the one that was in the witness room with you and whom you just left a few moments ago to come in to testify? A. Yes.

Q. Where is your brother Lew Suey Yet?

A. Here in the United States.

Q. Is this the boy that I have asked to stand up, sitting at my left at counsel table, is that your brother Lew Suey Yet? A. Yes.

The Court: How old were you when he was born?

The Witness: Approximately five or six.

The Court: Do you remember his birth? [31]

The Witness: I was too small to appreciate any of the goings on.

The Court: How old were you when you first could remember your brother?

The Witness: Ever since he was a child.

The Court: How old were you?

The Witness: When I was seven or eight. It was mandatory for me to look after him and to take care of him, and I remember I played with him, and ever since we grew up together.

The Court: You lived in the same house with him from the time he was born until you went down to Hong Kong?

The Witness: Yes.

Q. (By Mr. Brennan): Do you remember seeing Lew Wah Fook, that you have referred to as your father in 1946, in the village? A. Yes.

Q. For approximately how long did he remain in the vilage upon that occasion?

A. Approximately three months.

(Testimony of Lew Mon Soon.)

Q. Is that the same person that you have identified here as being your father?

A. Same one. He is my father.

The Court: When you saw your father in the village in 1946, what kind of clothes did he have on?

The Witness: Soldier's uniform. [32]

The Court: Soldier's uniform?

The Witness: Yes, soldier's uniform.

The Court: What soldier's uniform?

The Witness: It is army garments, that's all I know.

The Court: What army?

The Witness: United States Army.

The Court: How old were you then?

The Witness: About 16 or 17.

The Court: Did he have a gun?

The Witness: I didn't see any.

The Court: What kind of hat did he have?

The Witness: I saw it was a hat that he wore, but I couldn't describe it.

The Court: Was it a tin hat?

The Witness: Cloth. It was made out of cloth.

The Court: What color was it?

The Witness: Brown, khaki like.

The Court: Did your father wear a coat?

The Witness: I don't remember recalling an overcoat, but a coat, I remember.

The Court: What kind of a blouse did he have on?

The Witness: Medium size coat.

The Court: Did he have any marks on the coat, on the arms of the coat?

(Testimony of Lew Mon Soon.)

The Witness: It had an insignia. Just what type insignia [33] it is, I don't know.

The Court: Was your father an officer?

The Witness: I don't know whether he was an officer or not.

The Court: Didn't he tell you what he was?

The Witness: He never told me.

The Court: All right.

Mr. Brennan: Cross-examine.

Cross-Examination

By Mr. Talan:

Q. Do you remember the man who is alleged to be your father when he was in China on his second trip some time beginning with CR 21?

A. CR 21, at that time I was a child. I don't recall.

Q. When was it you saw the man who is alleged to be your father in China?

A. I remember seeing him when I was a child.

Q. How old were you then when you first remember seeing him?

A. I was perhaps four. Just when exactly, I don't know.

Q. What was the occasion when you first remember seeing him, at the time you were about four? [34]

A. I don't remember.

Q. When is the next time you remember seeing the man who is pointed out to you as your father?

A. The exact second time I can't remember. It is so long time ago.

(Testimony of Lew Mon Soon.)

Q. When is the most recent time you saw him in China?

A. The time before he came back in his army uniform, I remember.

Q. Do you remember when that was, the time before he came back in his army uniform?

A. The exact date, I don't know, I don't recall, but I remember I see him once before he came back with his army uniform.

Q. Was this about when you were, age four?

A. By age four, I meant my approximate age four. Exactly how old, I don't know.

Q. Was that time the time before he came back in uniform?

A. Yes, twice.

Q. Did you recognize your father when he came back in CR 35?

A. Yes, I remember.

Q. The last time prior to that time you were about age four, approximately, but you recognized him when he returned in CR 25? [35]

A. When he came back in CR 35, then I saw him again.

Q. Did you recognize him when he came back in CR 35?

A. Not too well.

Q. Then how did you know he was your father?

A. My grandmother told me.

Q. When he came back in CR 35, was he wearing a uniform?

A. Yes, army uniform.

Q. Had you ever seen a uniform like that before his return in CR 35?

A. There were some other soldiers passing by

(Testimony of Lew Mon Soon.)

the village before and I saw them. When my father came back with the same type uniform, I assumed it was an army uniform. I can't say truthfully whether they were before or not.

Q. How do you know which army uniform that was?

A. My father came to the United States and naturally he will be in the United States Army.

Q. When you lived in the village, Lung Ock, did you go to school? A. Yes.

Q. And where did you go to school while you were living in the village?

A. Li Ow Jung Slim.

Q. Where is this school located?

A. Near to our village. [36]

Q. About how far?

A. Little over 10 jungs.

Mr. Talan: Can that be translated in some type of English measurement?

The Interpreter: 10 Chinese feet equivalent to one jung.

The Court: This is approximately 100 Chinese feet from the village?

The Witness: I can't tell for sure.

The Court: You told us the other day a Chinese jung is about 1-1/2 in American feet.

The Interpreter: That's right.

The Court: So this would be 150 feet from the village?

The Interpreter: American count, yes, roughly.

(Testimony of Lew Mon Soon.)

Q. (By Mr. Talan): How long did you go to this school? A. Six years.

Q. Did you go to any other school in addition to this school? A. A went to another one.

Q. Which one was that?

A. Toy Chung School.

Q. Where is this school located with reference to the village of Lung Ock?

A. It is in Toy Shan Province, or the market place.

Q. How far away was that from the [37] village? A. About 20 odd lis.

The Court: And how much is a li?

The Witness: I don't know.

Mr. Brennan: I think the interpreter can probably give that to us. I think it is one-third of a mile.

The Court: Is a li a third of a mile?

The Interpreter: Close to it, approximately.

Q. (By Mr. Talan): Did you go to any other schools while you were in China?

A. Two schools.

Q. And these are the two that you have named, is that correct? A. They are the only two.

Q. And how long did you go to the second school? A. Little over three years.

Q. All together you went to school nine years in China? A. Little over nine years.

Q. The last school you attended was a school in Toy Shan? A. Yes, the latest one.

(Testimony of Lew Mon Soon.)

Q. When did you leave that school in Toy Shan, about how old were you at that time?

A. I was approximately 19 years old when I completed [38] Toy Shan Chung School.

Q. Do you recall what year it was you completed that attendance at that school in Toy Shan?

A. CR 37.

The Court: How old were you when you first started school?

The Witness: I remember about eight years old.

The Court: Was there any time between the time you left the first school to the time you started in the second school?

The Witness: There was a period when I wasn't going to school.

The Court: How long?

The Witness: Approximately two years.

The Court: Why did you quit school for two years?

The Witness: During the Japanese war.

Q. (By Mr. Talan): While you were attending this first school, this Li Ow Jung Slim School, were you living at home in the village?

A. Yes, at my home.

Q. When you began your attendance at the school at Toy Shan, were you still living at home in the village;

A. I was living in the school, the Toy Shan Chung School.

Q. Did you get home at all while you were away

(Testimony of Lew Mon Soon.)

at school? [39] A. I come home.

Q. How frequently would you come home while you were away at school?

A. I have no set pattern or schedule. I just come home and visit when I finish my school work.

Q. Would you go home several times a week, while you were away at school?

A. I don't come home every week.

Q. In 1946, were you attending school in Toy Shan?

A. Yes, I was in Toy Shan, going to school.

Q. Were you in Toy Shan in February, 1946?

A. That was vacation period in February.

Q. When did that vacation period begin?

A. There are two semesters in our school. This was the winter semester. It was too cold to stay in school, so we stayed off about over a month. It began some time in December of the previous year.

Q. That vacation lasted only a month?

A. Anywhere from one month to two months, no set pattern.

Q. Do you recall how long that particular vacation lasted?

A. No, I don't remember. It has been so long ago.

Q. Was it while you were on that vacation that you saw your father? [40]

A. It just so happened I was home on vacation and between semesters.

Q. Did you go back to school in Toy Shan while

(Testimony of Lew Mon Soon.)

your father was in the village on that last visit of his?

A. School started and I went back to school. My father was still in the village at home.

Q. Did you come back from Toy Shan while your father was still in the village on that last visit?

A. Since my father was home, I made special occasion to come back whenever I can, and especially seeing he was home, it was easy for me to get my tuition from him.

Q. Do you know how long your father stayed at home in the village on that last visit?

A. Approximately three months.

Q. What was the period that you were away from the village while you were attending school in Toy Shan?

A. CR 34 to 37, to the end of 37.

Q. Did you come back to live in the village before you left the village for Hong Kong?

A. Yes. I left the school. I went back to the village and I stayed in the village for a while before I went to Hong Kong.

Q. How long were you in the village before you left for Hong Kong?

A. A few months. [41]

Q. Up to the time you returned to the village for those few months before leaving for Hong Kong, you were away at Toy Shan attending school there, is that right?

A. Yes,

Q. You had been attending school away from home, attending the school in Toy Shan since about CR 34, is that right?

A. 34 to 37, that is about approximately.

(Testimony of Lew Mon Soon.)

Mr. Talan: No further questions of this witness.

Mr. Brennan: I have no further questions, your Honor.

The Court: We will now recess until 10:00 o'clock tomorrow morning.

(Thereupon, an adjournment was taken to 10:00 o'clock a.m., April 22, 1953.) [42]

April 22, 1953, 10:00 A.M.

The Clerk: Lew Wah Fook vs. Dulles.

Mr. Brennan: Ready.

Mr. Talan: Ready, your Honor.

The Court: You may call your next witness.

Mr. Brennan: Call Lew Mon Hing.

LEW MON HING

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified, through the interpreter, as follows.

The Clerk: Will you state your name, please?

The Witness: Lew Mon Hing.

Mr. Bennan: Your Honor, I am wondering at this time if we can enter into the record as a stipulation the statement I made the other day to which there appeared to be no disagreement, that Lew Mon Soong, who testified yesterday, and Lew Mon Hing, who is now on the stand, have been admitted to the United States as American citizens through derivative citizenship of their father, Lew Wah Fook.

(Testimony of Lew Mon Hing.)

Mr. Talan: We concede that, your Honor.

The Court: And can you stipulate as to when they were admitted?

Mr. Brennan: Yes. [44]

The Court: Approximately when?

Mr. Brennan: The date that the determination was made was July 1, 1952. Whether it was made effective immediately or not, I don't know, but the determination was made. Is that your stipulation?

Mr. Talan: Yes, your Honor, we will stipulate to that.

Mr. Brennan: July 1, 1952.

Direct Examination

By Mr. Brennan:

Q. Where were you born? A. In China.

Q. What village? A. Lung Ock Village.

Q. Who was your father?

A. Wah Fook.

Q. Who was your mother?

A. Huie Shee.

Q. When were you born?

A. CR 22, 12th month, 5th day.

Q. Do you have an older brother?

A. Yes.

Q. What is his name?

A. Lew Mon Soong.

Q. Is he the one that testified yesterday and exchanged [45] places with you in the witness room this morning? A. Yes.

(Testimony of Lew Mon Hing.)

Q. Is the person you identified as your father the person that also is waiting in the witness room and testified in court yesterday, being Lew Wah Fook? A. Yes.

Q. That is the person you identified as your father in your testimony this morning, is that correct? A. Yes.

Q. Do you have a younger brother?

A. Yes.

Q. What is your next younger brother's name?

A. Lew Yet Tan.

Q. Do you have a brother older than that?

A. Yes.

Q. What is his name?

A. Lew Poy, born here in the United States.

Q. Is that a younger brother still?

A. The youngest.

Q. Now, is there a brother between you and Lew Mon Tan or Tang? A. Yes.

Q. What is his name? A. Lew Yut.

Q. Where is he now? [46] A. In China.

Q. Do you have any other brothers besides Lew Mon Soong in the United States?

A. Yes, my No. 3 brother, Thew Yet.

Q. Is he the brother sitting at my left at counsel table? A. Yes.

The Court: When was he born?

The Witness: CR 24, 8th month, 12th day.

The Court: While we are on that, did you say a moment ago that you were born CR 22-12-5?

The Witness: Yes.

(Testimony of Lew Mon Hing.)

The Court: Would you translate that? What is that?

Mr. Brennan: We had that translated yesterday, if your Honor would care for me to give it.

The Court: Let's get it here now.

The Interpreter: January 19, 1934.

Mr. Brennan: Does your Honor have any other questions now?

The Court: This is the first case that I can recall where there seems to be a difference in dates. I am amazed sometimes at how well these people remember dates. They testify time after time and all of them testify right on the dot as far as dates. Here is a case where there seems to be some difficulty. This witness has just given 22-12-5. The [47] father gave 22-11-15.

Mr. Brennan: He subsequently corrected that to CR 22-12-5, your Honor.

The Court: The father has given not only a wrong date on this boy, but a wrong date on the other boy.

Mr. Brennan: Which he also corrected.

The Court: Which he has corrected here in court. All right. You proceed now.

Mr. Brennan: Those are the two boys that are conceded to be his sons, your Honor.

The Court: I know. This is the one that doesn't make any difference anyhow.

Mr. Brennan: On the plaintiff, there has been no conflict.

(Testimony of Lew Mon Hing.)

The Court: No, there has been no conflict as to the plaintiff yet.

Q. (By Mr. Brennan): Did you come to the United States with your brothers, Lew Mon Soong and Lew Suey Yet? A. Yes.

Q. And before you came to the United States, were you and your two brothers in Hong Kong for a period of time?

A. Yes. We stayed together in Hong Kong.

Q. Did you go to Hong Kong together, the three of you? A. Yes, together. [48]

Q. Did you go to Hong Kong together from the village where you and your two brothers were born?

A. Yes.

Q. From the birth of your brother, the plaintiff in this case, Lew Suey Yet, until you left for Hong Kong from the village to come to the United States, did you and that younger brother and your older brother live together in the same house in the village? A. Yes, the same house.

Q. Were you present and do you recall seeing your father in the village in February of 1946?

A. Yes.

Q. For how long a period of time was he in the village? A. A little over two months.

Q. Were your brothers, Lew Mon Soong and Lew Suey Yet, both in the village during that period of time when your father was there?

A. Yes.

Q. From the time of the birth of Lew Suey Yet until you left for Hong Kong, were you all part

(Testimony of Lew Mon Hing.)

of the same household and did you play together, would you be around the house and in the village together? A. Yes.

Mr. Brennan: Cross-examine, [49]

Cross-Examination

By Mr. Talan:

Q. From the time you can remember, where was your house in the village of Lung Ock?

A. I remember.

Q. Where was it located in the village?

A. West side.

The Court: May I ask a question?

Mr. Talan: Go ahead, your Honor.

The Court: Did this village have a head or a tail?

The Witness: Yes.

The Court: How many houses were in the village?

The Witness: 15.

The Court: Which way was the head of the village?

The Witness: Towards the east.

The Court: Were the houses divided into rows?

The Witness: Yes.

The Court: From the head of the village, that is, from the east side of the village, what row was your house in?

The Witness: The last row.

The Court: How many rows were in the village?

(Testimony of Lew Mon Hing.)

The Witness: Five.

The Court: Where was your house in the last row?

The Witness: The first one.

The Court: The first one from which direction, from north [50] or south?

The Witness: Towards the north.

The Court: It was the first house on the north side?

The Interpreter: Yes.

The Court: How many houses were in that row?

The Witness: Three.

The Court: All right. Now you can proceed.

Q. (By Mr. Talan): As long as you can remember, is that the house you always lived in when you were in the village? A. Yes.

Q. Can you tell us what the sleeping arrangements were in that house? A. Yes.

Q. Would you tell us what they were?

The Court: Just a minute. May I interrupt a minute?

Mr. Talan: Certainly.

The Court: How old were you when you left the village to go to Hong Kong?

The Witness: 19.

The Court: You had lived in this house from the day you were born until the day you left for Hong Kong?

The Witness: Except for the period of time when I went to school in Toy Shan.

The Court: Were you going to school in Toy

(Testimony of Lew Mon Hing.)

Shan immediately [51] before you went to Hong Kong?

The Witness: Yes. I went back to the village and stayed for a short while before I went to Hong Kong.

The Court: How long did you stay in the village before you went to Hong Kong?

The Witness: About a month and a half, two months, around there.

The Court: Now you better put your question as to time. We have got 19 years. The sleeping arrangements changed in the 19 years. Let's put it immediately before he left for Hong Kong and immediately before he went away to school.

Mr. Talan: All right, your Honor.

Q. What were the sleeping arrangements in this house you lived in in the village just before you left for school in Toy Shan?

A. My brother, Soong, and I lived in the same room and at times my fifth and sixth uncle is also in that room. It is the center room towards the house which we partitioned the rear part and used it as living quarters. My mother and Yet, Lew Suey Yet, stay with my mother, slept with my mother, and at times when my father is home, he slept there also. Then the room toward the east, my grandmother and occasionally my aunt slept together.

Q. Was this arrangement still in existence at the time you left the village for Hong Kong? [52]

A. Yes.

(Testimony of Lew Mon Hing.)

Q. Was there any time when you and your third brother slept in the same room?

A. No. He always slept with his mother.

Q. When did you leave the village to go to school in Toy Shan? A. CR 36.

Q. How long did you go to school in Toy Shan?

A. For two years.

Q. While you were going to school in Toy Shan, were you living in Toy Shan?

A. I was living in the school.

Mr. Talan: No further questions, your Honor.

Mr. Brennan: No questions. He may be returned to the witness room and I will call at this time Lew Shui Yet.

LEW SHUI YET

called as a witness by and in his own behalf, having been first duly sworn, was examined and testified, through the interpreter, as follows:

The Clerk: Your name, please?

The Witness: Lew Shui Yet. [53]

Direct Examination

By Mr. Brennan:

Q. Is it your claim that you are entitled to permanent residence and desire to be a permanent resident of Los Angeles County, being in the Southern District of California, Central Division, of this court? A. Yes.

Q. Who is your father?

A. Lew Wah Fook.

(Testimony of Lew Shui Yet.)

Q. Is that the person that has been in court with you and is now in the witness room adjacent to this court? A. Yes.

Q. Who is your mother?

A. Huie Shee Yee.

Q. In what village were you born?

A. Lung Ock Li.

Q. When were you born?

A. CR 24, 8th month, 12th day.

The Interpreter: September 9, 1935.

Q. (By Mr. Brennan): Did you come to the United States with two older brothers, Lew Mon Soong and Lew Mon Hing? A. Yes.

Q. Just before coming to the United States, were you in Hong Kong with them for a period of [54] time? A. Yes.

Q. Did you go to Hong Kong with them from the village? A. Yes.

Q. Before leaving the village for Hong Kong, where did you reside from the time of your birth?

A. As far as I can remember, I stayed in the village all the time.

The Court: When you went to Hong Kong, how old were you?

The Witness: About 15.

The Court: Then you were in the village from the time you were born until you were 15, is that right?

The Witness: Yes.

Q. (By Mr. Brennan): During that period of time did you live with your two brothers, Lew Mon

(Testimony of Lew Shui Yet.)

Soong and Lew Mon Hing, in the same house in the village? A. Yes.

Q. Did you see your father in February, 1946?

A. Yes.

Q. How old were you then? A. About 11.

Q. In what village did you see your father?

A. Lung Ock Li Village.

Q. For how long a period of time was he there?

A. Over two months. [55]

Q. Is that the same person you have identified as being your father, Lew Wah Fook?

A. Yes.

Q. And the two brothers that you identified as being the ones that you went to Hong Kong with and came to the United States with, are those the two boys that have been in court with you and are now in the witness room adjacent to this court?

A. The same.

Q. From the time of your birth, as you can remember that period—withdraw that.

From as far back as you can remember up until the time you left for Hong Kong with your two brothers, did you grow up in the village and play with them and live in a family unit with those two brothers that you have identified? A. Yes.

Mr. Brennan: Cross-examine.

Cross-Examination

By Mr. Talan:

Q. Were you living in the village of Lung Uck in 1946? A. Yes.

(Testimony of Lew Shui Yet.)

Q. Were you going to school at that time?

A. It was during vacation time.

Q. When was vacation time in 1946? [56]

A. From December of the preceding year to the second month of the 35th year, CR 35. They started on CR 34 to the second month in CR 35.

Q. When is the first time you remember seeing the man you have alleged to be your father?

A. That is the first time.

Q. When was that? A. CR 35.

Q. What part of CR 35?

A. The first month of CR 35.

Q. Where were you when you first saw this man?

A. I was at home.

Q. In your house at the village?

A. Yes, in the house.

Q. How did you know this man was your father?

A. My grandmother told me.

Q. While you were living in the village from the time you were born until you left for Hong Kong, were your two older brothers always in the village with you?

A. Sometimes they go to school.

Q. Were they both away at the same time?

A. The eldest one went to school in CR 34. The next to the eldest went CR 36.

The Court: What do you mean? He went away to school?

The Witness: Yes, went away to school. [57]

Q. (By Mr. Talan): When did your first brother leave school?

(Testimony of Lew Shui Yet.)

A. CR 34 to 37, he went to school.

Q. When did your second brother leave school?

A. CR 36 to CR 37.

Q. Have you always been called by your present name?

A. Ever since I was small that I can remember.

Q. Has any member of your family ever given you another name?

A. No one has ever given me a name, but I was subject to ridicule because of my name.

Mr. Talan: No further questions, your Honor.

Redirect Examination

By Mr. Brennan:

Q. You say you were subject to ridicule because of your name. Why is that?

A. Because all the other little children my age said my name is a girl's name.

Mr. Brennan: That's all.

Mr. Talan: No further questions, your Honor.

The Court: Step down.

(Witness excused.)

Mr. Brennan: That is the plaintiff's case, your Honor. [58]

Mr. Talan: May we have Lew Wah Fook recalled for cross-examination?

Mr. Brennan: That's right. I had forgotten about that. We will not rest until we determine what may develop on cross-examination. We have no other witnesses.

LEW WAH FOOK

a witness by and on behalf of the plaintiff, having been heretofore duly sworn, resumed the stand and testified, through the interpreter, further as follows:

The Clerk: Your name is Lew Wah Fook?

The Witness: Yes.

The Clerk: You have been sworn.

Cross-Examination

By Mr. Talan:

Q. Do you understand English?

A. Very little.

Q. Do you speak English?

A. Very little.

Q. When you first arrived in the United States from China in 1923, were you accompanied by anybody else? A. I was with my father.

Mr. Brennan: What was the date that you gave in the question? [59]

Mr. Talan: 1923.

Q. Where was your father living in that year? In China or in the United States? Withdraw the question. Did he come with you at that time from China? A. He was with me on the same boat.

Q. Where was his residence in the United States at that time?

A. 863 Stockton Street, San Francisco.

Q. After you were admitted to the United States in 1923, did you go to live with your father in San Francisco?

(Testimony of Lew Wah Fook.)

A. I stayed in San Francisco.

Q. How long did you stay in San Francisco?

A. Up until the time I made my trip back to China in 1929.

Q. After you returned from that first trip to China in 1931 where did you take up residence in the United States then?

A. I returned to San Francisco and stayed at the same address in San Francisco.

The Court: With your father?

The Witness: Yes, with my father.

Q. (By Mr. Talan): And how long did you stay at that address?

A. To 1932, when I returned to China.

Q. After you returned from that second trip to China in 1935, where did you then take up residence in the United States? [60]

A. Same address in San Francisco.

The Court: With your father?

The Witness: Yes, with my father.

Q. (By Mr. Talan): When did you leave that address? A. 1936.

Q. Was your father still at that address when you left it in 1936?

A. My father was still there.

Q. Where did you go after you left that address? A. I came to Los Angeles.

Q. Where did you take up residence in Los Angeles? A. 928 South Western.

Q. While you were living at that address in Los

(Testimony of Lew Wah Fook.)

Angeles and your father was still in San Francisco, did you correspond with one another?

A. Very seldom. I may write to him, but he never answer because he doesn't know how to write letters.

Q. Did he ever have anybody write for him?

A. Prior to his trip to China, he wrote me a letter. I don't know whether he wrote it or someone else wrote it for him.

Q. When was his trip to China that you just mentioned? A. It was some time in 1936.

Q. While he was over in China on that trip, did you [61] ever hear from him?

A. He wrote me one letter I can remember. That was at Hong Kong, where he asked someone else to write for him, telling me that he arrived safely.

Q. Can you recall what year that letter was written for your father?

A. I deduce it as 1936 inasmuch as he left in 1936. I don't recall that distinctly.

Q. Did he say in that letter whether or not he had reached the village?

A. The letter only stipulated that he arrived in Hong Kong.

Q. Did your father ever return to the United States from that trip? A. No.

Q. Is he still living? A. No. He is dead.

Q. When did he die? A. 1943.

Q. From 1936 to 1943, you never heard from him while you were here in the United States?

A. Being that he is the head of the family, they

(Testimony of Lew Wah Fook.)

use his name in the letters, but the letter was not written by him, but they were family letters informing me of what is the condition back in [62] China.

Q. Your father's name was signed to those letters?

A. The other family wrote his name, but they respected him that much because he was the head of the family.

Q. How many times did you get such letters with his name on them?

A. About three or four times.

Q. Between 1936 and 1943?

A. Yes, because during the time of 1936 all China was engaged in a war with Japan and letters were very infrequent.

Q. Can you recall the date of the last letter you received with your father's name on it?

A. Approximately 1940.

Q. After you came to the United States, how many trips did you make away from the United States? A. I made two trips on my own.

Q. Were those two trips to China?

A. Yes.

Q. Did you ever make a trip away from the United States to any other place? A. No.

Q. Did you ever contemplate such a trip?

A. I may have thought of it but I never actually went to any other country.

Q. Did you ever initiate any action with respect to any trip away from this country other than the

(Testimony of Lew Wah Fook.)

two trips you [63] made to China? A. Yes.

Q. When was this? A. 1943.

Q. Where were you about to go in 1943?

A. To Alaska to work.

Mr. Talan: May I have this document marked for identification?

The Court: It may be marked Defendant's Exhibit A.

The Clerk: So marked.

(The document referred to was marked as Defendant's Exhibit A for identification.)

Mr. Talan: That is a copy, your Honor, and if there is no objection, we will use the copy.

Mr. Brennan: No objection to the use of the copy and it may be received in evidence as far as I am concerned.

Mr. Talan: I won't offer it at this time.

Q. I will refer you to Defendant's Exhibit A for identification and ask you if that is your signature in English in the space designated as Applicant's signature?

A. Yes, that is my signature.

Q. I refer you to the same exhibit, the same portion of that exhibit, and ask you if that is your signature in Chinese which appears to the right of your signature in English? A. Yes. [64]

Q. Do you remember furnishing the officer in the Immigration and Naturalization Service with the information that appears on this Exhibit A, Defendant's Exhibit A for identification?

(Testimony of Lew Wah Fook.)

A. I remember now.

Q. Do you recall whether or not those statements you made in connection with that form were given under oath?

A. I don't remember whether it was under oath or not.

Q. Do you remember giving this information, which appears in this Defendant's Exhibit A:

"Class—Son of native.

"Date—4/21/43.

"Sworn—Yes."

Mr. Brennan: We will stipulate he gave all of the information as shown on the document.

The Witness: This is not my handwriting.

Q. (By Mr. Talan): Is any of this in your handwriting? A. Only my name.

Q. Do you remember giving this information in connection with this item:

"Describe all your children: 2 sons and 1 daughter."

Did you give that information at that time?

A. I remember giving that information. [65]

The Court: What was that?

The Witness: I remember giving that information.

Q. (By Mr. Talan): Under "Name" you showed first Lew Mon Hing; sex, male; age, 11; birth date, CR 22-12-5, Lung Ock Village, China."

Was that information supplied by you at that time? A. Yes.

(Testimony of Lew Wah Fook.)

Q. Then under "Name," the name Lew Mon Thung; sex, male; age, 14; CR 19-9-19, Lung Ock Village, China; did you supply that information at that time? A. Yes.

Q. Then under that "Name," the name Lew Siu Ngoot; sex, female; age, 9; CR 24-8-12, Lung Ock Village. Did you give that information at that time?

A. Yes.

Q. Do you remember being asked about the form which is Defendant's Exhibit A for identification at the time of the primary examination in connection with the application of your boys on or about June 7, 1951, at San Pedro, California?

A. They asked me that.

Q. Can you recall what answers you gave in connection with the questions about this form that were asked of you at that examination?

A. I told them I didn't remember that application. In [66] the beginning, I didn't remember. Then when they showed me the document, then I recall.

Q. Did you say at that time that you had never claimed you had a daughter?

A. I told them I didn't have any daughters.

Q. The question is, did you tell them at that time that you had never claimed that you had a daughter? A. I claim I had a daughter.

The Court: You claim you had a daughter?

Mr. Brennan: Claimed, I think he said.

The Court: Is it claimed?

The Interpreter: Claimed, e-d.

(Testimony of Lew Wah Fook.)

The Court: Before you proceed with the cross-examination, we'd better take our morning recess. We will now recess until 10 minutes after 11:00.

(Recess.)

Mr. Talan: May I have this document marked for identification?

The Court: It may be marked Defendant's Exhibit B for identification.

The Clerk: So marked, B for identification.

(The document referred to was marked as Defendant's Exhibit B for identification.)

Q. (By Mr. Talan): I refer you to page 42 of Exhibit 1. [67]

The Court: Exhibit 1?

Mr. Talan: It is referred to as that. This is the transcript of the primary examination.

The Court: It is Exhibit B.

Mr. Brennan: It is Exhibit 1 attached to Exhibit B, is it?

Mr. Talan: That's right.

Q. Referring to page 42 of Exhibit 1 attached to Defendant's Exhibit B for identification, I ask you whether or not you gave the following answer to this question:

"On this form under 'Describe all your children,' it says two sons and one daughter, and it gives the third child, Lew Siu Ngoot, born CR 24-12- as female. How do you explain that?

"A. I don't know how that come in, I couldn't

(Testimony of Lew Wah Fook.)

explain to you. I never was claiming a daughter, I never had one before."

Did you make that answer?

A. I did make that statement. However, I want to explain that when I said I never claimed a daughter, I did claim a daughter, but I never claimed a daughter to the immigration office, that is what I meant.

The Court: You say you claim a daughter? What daughter do you claim? [68]

The Witness: I thought Lew Thew Yet was a daughter.

The Court: This is the party you were referring to?

The Witness: Yes. I thought he was a girl.

The Court: You mean to say that when this boy was born or when the child was born, you thought a girl was born, is that right?

The Witness: Yes, that's right.

The Court: When did you find out it wasn't a girl?

The Witness: When I was in the Army and I had my leave and went back to the village, I found out it was a boy.

The Court: That is the first time you found out this is a boy?

The Witness: That is my first time.

The Court: Who names Chinese children?

The Witness: The head of the family. In my case, it was my mother.

The Court: Didn't your mother or your wife ever

(Testimony of Lew Wah Fook.)

write you after the birth of this child what the name of the child was?

The Witness: I received correspondence saying that my wife gave birth to a child and gave me the name and date of birth, and it was born and it was well, but I just assumed, it was a girl's name, I just assumed it was a daughter. It didn't mention specifically whether it was a boy or a girl, but it was a girl's name, so I deduced it was a girl. [69]

The Court: Nobody ever wrote you it was a boy?

The Witness: No, I was never informed of that.

The Court: Don't you think it is very strange a girl's name was given to a boy?

The Witness: This was an unusual case, yes.

The Court: May I ask the interpreter a question?

The Interpreter: Yes.

The Court: Have you ever heard in China where a girl's name was given to a boy?

The Interpreter: Yes, it has happened before. There is some sort of superstition. In fact, when I was a child, I had to have my Chinese name changed once because when I was a child I was very sickly and they felt the name had something to do with it, and it didn't suit my nature.

The Court: They didn't give you a girl's name?

The Interpreter: My second name could be interpreted that way.

The Court: There is no question this is a girl's name?

(Testimony of Lew Wah Fook.)

The Interpreter: Mine is questionable, but this is strictly a girl's name. The second name means pretty and a boy would never be called pretty. A girl's name flows into three or four situations, where they are after something, pretty or esthetic or after a flower or after something that is very delicate. A boy's name would be something strong, something ferocious, like some sort of an animal or something [70] hard, like rock or steel. Chiang Kai Shek's name is rock.

The Court: It would seem to me mighty strange, considering the attitude of the Chinese relative to the difference between a boy and a girl, the male and the female, that they are always celebrating the birth of a boy. I don't know what they do with the girls. The girls in the Chinese race would be exterminated in three or four generations if the ratio we have in these cases applies. We don't have any girls at all.

The Interpreter: There is a time when you do have a girl and they don't mention it. The son they are very proud of. It is some sort of primogeniture.

The Court: It would take a lot of explanation as to why this was done, considering the fact that in China the sons are always the ones that are wanted, they are the ones that carry on the race, so it would take a lot of explanation as to why anybody would name a boy as a girl. It is pretty near inconceivable.

The Interpreter: It is very unusual.

The Court: Ask the witness this: You claim you

(Testimony of Lew Wah Fook.)

didn't know this child was a boy until you went back to the village when you were in the Army in 1946 or 1947.

Mr. Brennan: 1946.

The Court: Yes, 1946.

The Witness: It was in 1946 that I first found out it was a boy instead of a girl. Naturally, I was very joyous of [71] the fact and I demanded an explanation. The explanation was that my mother, who was a highly superstitious woman, at the time when the child was born, she went to this idol that they have and through this process of the idol, they shook these little bamboo sticks that have characters in them, and in that way she can get the name for the boy. The name came out from the bamboo sticks stating that it is a girl's name, and the explanation said that if this child was born and was born a boy, with a boy's name, the child would not live long, so it must be a girl. So subsequently when the child was born and they found out it was a boy, my mother sought to offset the spirits by giving the boy a girl's name, and instructed all the rest of the family not to tell me it was a boy, but to inform me, if they ever had the chance to write to me, to either keep quiet about it or tell me it was a girl.

The Court: When did you get this information? When did you find out this information?

The Witness: When I went back to China in 1946 and I saw my child, and by his features I knew it was a boy. I demanded an explanation. It

(Testimony of Lew Wah Fook.)

was at that time that they told me what went on. Right away I was denied of a joyous celebration because it was a boy, and at that very moment when I found out, I wanted to make a ceremony and change the name to a boy's name, but my mother would not let me do so, stating the boy would have to reach the age of 18 before such a process [72] can be undertaken; otherwise, his health would be in jeopardy.

The Court: All right.

Q. (By Mr. Talan): I refer you to Plaintiff's Exhibit 2 in evidence and ask you whether the child you claimed as a daughter is the child that resulted from the pregnancy that you reported to the Immigration Service at that time, which was July 31, 1935? A. Yes.

Q. At that time did you report your wife was pregnant seven months?

A. I don't remember how many months but I remember I did report she was pregnant.

Q. How soon after you returned to the United States from that trip did you learn of the birth of the child that resulted from that pregnancy?

A. It was approximately 1935 in the tenth month, according to Chinese reckoning, that I received a letter stating that a child was born.

Mr. Talan: Will you translate that?

The Interpreter: The last five days of October and the month of November.

The Court: What year?

The Witness: 1935.

(Testimony of Lew Wah Fook.)

The Court: How did you get this word? [73]

The Interpreter: What word is that?

The Court: Relative to October or November?

The Witness: I came back on July, 1935, and it was about two or three months thereafter that I received a letter, so I am approximating.

The Court: Received a letter from whom?

The Witness: My mother.

The Court: This letter just said a child was born, didn't say it was a boy or a girl?

The Witness: It didn't say whether boy or girl, but it had a girl's name.

The Court: You haven't got a copy of that letter, have you?

The Witness: I lost, destroyed or have given away all my things prior to the time I went into the service so I don't have a copy.

Q. (By Mr. Talan): This child that was born in 1935, is this the child that was named Lew Shew Yet? A. Yes.

Q. After the birth of this child, did you ever have any correspondence with your wife in China?

A. Yes.

Q. How frequently did you correspond with your wife?

A. About two or three times each year. [74]

Q. You corresponded with your wife two or three times each year from 1935 until 1943?

A. The first few years when I returned after 1935, I received quite a few letters, but since that

(Testimony of Lew Wah Fook.)

time from about '37 on, when China was at war with Japan, the letters came very infrequently.

Q. Can you remember how many letters you received between 1935 and 1937?

A. About five or six.

Q. In any of those letters was any reference made to the sex of your third child?

A. She never mentioned the sex. The letters that was written that was from her were written by someone else in the market place where you have to pay for letter writers.

Q. In your correspondence at that time to her, did you ever refer to the sex of the child?

A. I don't recall specifying the sex of the child, but I recall that I asked each and every member how are they doing.

Q. When did you enter the armed forces of the United States? A. 1943.

Q. When in 1943?

A. July, about the 15th.

Q. At the time you entered into the armed forces of the [75] United States, did you make any claims for dependents? A. Yes.

Q. And whom did you claim as your dependents at that time?

A. I claimed one wife, two sons and one daughter.

Q. Did you ever change that claim of dependency while you were in the armed forces?

A. I never changed it.

Q. Did you ever make any claims for depend-

(Testimony of Lew Wah Fook.)

ents on income tax returns? A. Yes.

Q. Do you remember the last year when you made any such claim prior to 1943?

A. I believe I did.

Q. Whom did you claim as your dependents on those income tax returns?

A. My wife, my two sons, and one daughter.

Q. When you returned to the village in China on your furlough from the armed forces in 1946, what were the circumstances under which you learned your third child was a boy, rather than a girl?

A. When I went into the home and my three sons came forth, I was astonished, because I had three sons. I thought the youngest one was a daughter.

Q. Weren't you curious as to why three sons came forward? [76]

A. For over a period of 10 years I thought I had a daughter, and at that moment I found out I had another son. I was joyous. But at the same time I was curious because I wondered why no one ever told me, and I was astonished and happy at the same time.

Q. Did you ask where your daughter was when you first arrived home in the village?

A. I didn't ask because my son was introduced to me as my son with a name I had known my daughter to be, so I assumed there was no other person.

Q. What is the explanation that was given to

(Testimony of Lew Wah Fook.)

you at that time for the fact that the third boy in that house bore the name that was given to him?

A. Prior to the actual birth, my wife was expecting any day, and my mother went to this temple and shook these bamboo sticks. The sticks that fell from this disclosed that I was not due to have a son during that year, that if I do have, give birth to a son, that is my wife give birth to a son, that person will not live. So in order to offset that, in the event you do have a son, you have to give it a girl's name and you have to train it as if it was a girl until it is 18 years old, and at that time you can change the name and treat it as a boy from there on, but before that you have to treat it as a girl. [77]

Q. Prior to your return to the village in 1946, you never received such an explanation in your correspondence with your family in China?

A. They never informed me, because I don't believe in the Chinese religion or spirits. I am a Christian. I assume if they told me, I would naturally refuse to carry out such an antiquated custom. I would make sure there would be a celebration because it was a boy. Also, I would give it a boy's name if I had known about it.

Q. Did anybody in your family consult a fortune teller with respect to the naming of this child?

A. Yes. There was a fortune teller that my mother consulted after she went through this procedure at the temple, and the fortune teller also told her the same thing, that if it was a son, it would not

(Testimony of Lew Wah Fook.)

live long, that we have to give it a girl's name and raise it as if it is a girl.

Q. When is the last time you had any communication with your family prior to your entering into the armed forces of the United States?

A. 1941.

Q. Who was it that wrote to you in 1941?

A. It was through my father's name.

Q. Did you ever receive any letters from your older sons prior to 1943? A. No. [78]

Q. How often did you send money to your family after you returned from your trip in 1935 until you left with the armed forces?

A. On my return to the United States in 1935, I was unemployed. During the whole year of 1935 I did not send any money back to the family.

In 1936, I found employment and I sent money back twice. Thereafter I tried to make it a point to send money back two or three times a year.

Q. On each of the occasions when you sent money back to your family in China, did you write a letter to them?

A. In 1936, when I sent money back, I always accompanied any money I did send back with a letter, but after 1937, when there is a Japanese war in progress in China, I cabled the money back because that is the only method that is assured with any security. I cabled it back to a store. I did not accompany it with any letter. The reason I did that was that the people in the village was moving back and forth because the Japanese were going through

(Testimony of Lew Wah Fook.)

each village and they were in hiding, so the only thing I can do is cable to a specified store and they will come to the store and ask at different intervals if any money is sent over from the United States to them.

Q. The letters that you did write back to China after 1935, to whom were they addressed there? [79]

A. Before my father went back to China, my mother was the head of the family. I sent the money in her name. After my father went back to China, he became the head of the family and I sent money in his name.

Q. I am asking you about the letters you wrote, with or without name, to whom were they addressed in China?

A. These letters were very short. I addressed them the same way as if I cabled money. It is up to my mother, who is the head of the family.

Q. Did you ever send any clothing back to your family in China?

A. I never sent any clothing, no.

Q. Did you ever send any toys back to your children? A. No.

Q. In 1940, how many relatives did you have here in the United States?

A. Two older brothers and one younger brother here in the United States in 1940.

Q. Where did each of those brothers live in the United States?

A. One in Arkansas, one in North Dakota, and one in Arizona.

(Testimony of Lew Wah Fook.)

Q. Did you ever correspond with these brothers after 1935? A. No, I did not. [80]

Mr. Talan: Your Honor, I would like to offer Defendant's Exhibits A and B in evidence at this time.

The Court: They may be received in evidence.

The Clerk: So marked.

Mr. Brennan: I am going to object to the receipt of any portion of B except those portions of B with which counsel confronted this witness, on the grounds it is incompetent, irrelevant and immaterial.

The Court: I think the objection is good, so the order will be that way. The only parts admissible in evidence are the parts which counsel has called to the witness' attention.

(The exhibits referred to were received in evidence and marked Defendant's Exhibits A and B.)

The Court: How much more have you?

Mr. Talan: We have no other questions.

The Court: Does that complete your case?

Mr. Talan: Yes.

The Court: Have you any other witnesses?

Mr. Brennan: No other witnesses, and I believe we will not recall any other witnesses.

The Court: I am going to recess until after lunch. I am just wondering about it. It won't take more than an hour to complete, will it?

Mr. Brennan: I am sure not.

The Court: Then I will arrange to take care of some [81] other matters at 3:00 o'clock.

We will now recess until 2:00 o'clock this afternoon.

(Thereupon, a recess was taken to 2:00 [82] p.m.)

April 22, 1953—2:00 P.M.

(Other court matters were taken up.)

The Court: You may proceed now.

Mr. Brennan: At this time we introduce into evidence a photostatic copy of Plaintiff's Exhibit 3 for identification and ask leave to withdraw the original and return that to the witness, Lew Wah Fook.

The Court: Such may be the order.

The Clerk: It will be marked Plaintiff's Exhibit No. 3.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 3.)

Mr. Brennan: I just want to ask the witness who has been on the stand to step over to counsel table and stand next to the plaintiff and I will ask the court to observe the two while they are standing together. Will you step over here, please, and will you stand up next to your father?

(Complying.)

The Court: All right.

Mr. Brennan: No further questions, your Honor.

The plaintiff rests.

Mr. Talan: We have no further questions of this witness and we have no other evidence. The defendant rests.

Mr. Brennan: I have just one or two brief observations to make. [83]

(Argument of counsel.)

The Court: I think the only thing I can do in this case is render judgment in favor of the defendant. The evidence just doesn't add up. It seems to me, knowing Chinese people and the store they put on boys, and the fact that girls are rather an insignificant quantity, the birth of a boy is a matter of celebration, that it is inconceivable a mother or a grandmother would keep the information from the father for a period of 11 years. If it was a couple of years, I could understand it, but after 11 years, it just doesn't add up.

Judgment is for the defendant.

We will stand in recess until 10:00 o'clock tomorrow morning. [84]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified

therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 22nd day of October, 1953.

/s/ S. J. TRAINOR,
Official Reporter.

[Endorsed]: Filed October 27, 1953. [85]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered from 1 to 28, inclusive, contain the original Petition to Establish Nationality; Declaratory Judgment Under Section 503 of the Nationality Act of 1940; Application for Appointment of Guardian Ad Litem; Order Appointing Guardian Ad Litem; Answer; Stipulation and Order for Substitution of Party Defendant; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Designation of Record on Appeal and Order Extending Time to Docket Appeal and a full, true and correct copy of Minutes of the Court for April 21 and 22, 1953, which, together with original Plaintiff's Exhibits 1, 2 and 3 and Defendant's Exhibits A and B and Reporter's Transcript of Proceedings

on April 21 and 22, 1953, transmitted herewith, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 27th day of October, A.D. 1953.

[Seal]

EDMUND L. SMITH,

Clerk;

By /s/ THEODORE HOCKE,

Chief Deputy.

[Endorsed]: No. 14106. United States Court of Appeals for the Ninth Circuit. Lew Wah Fook, as Guardian Ad Litem for Lew Suey Yet, Also Known as Lew Thew Yut, Appellant, vs. Herbert Brownell, Jr., as Attorney General of the United States, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed October 28, 1953.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14320 HW

LEW WAH FOOK as Guardian Ad Litem for
LEW SUEY YET, a/k/a LEW THEW YUT,
Appellant,

vs.

HERBERT BROWNELL, JR., as United States
Attorney General,

Appellee.

STATEMENT OF POINTS

To the Honorable United States Circuit Court of
Appeals for the Ninth Circuit:

Comes now the appellant, Lew Wah Fook as
Guardian Ad Litem for Lew Suey Yet, a/k/a Lew
Thew Yut, and sets forth his statements on appeal
and designation of the record on appeal, as follows:

Statement

I.

The Court erred in not declaring the plaintiff,
Lew Suey Yet, a/k/a Lew Thew Yut, a citizen of
the United States, in view of the direct testimony
of witnesses which was not contradicted, nor were
any material inconsistencies shown on cross-exami-
nation, and the complete lack of any evidence to the
contrary adduced or introduced by the defendant.

BRENNAN & CORNELL

By /s/ WM. E. CORNELL,
Attorneys for Plaintiff.

Dated: November 5, 1953.

[Endorsed]: Filed November 6, 1953.

[Title of Court of Appeals and Cause.]

STIPULATION CONCERNING EXHIBITS

It Is Hereby Stipulated by and between counsel for appellant and appellee, as follows:

I.

That the original exhibits introduced at the time of trial of the within matter need not be printed, and the originals of the same may be considered by the Circuit Court of Appeals on the appeal in this matter.

II.

It is further stipulated that the Immigration files referred to as Defendant's Exhibits "A" and "B" need not be printed, and counsel may append any portion they desire of said Immigration proceedings to their briefs on appeal in the within matter.

BRENNAN & CORNELL,

By /s/ WM. E. CORNELL,

Attorneys for Appellant.

/s/ LAUGHLIN E. WATERS,

United States Attorney;

By /s/ ARLINE MARTIN,

Attorney for Appellee.

[Endorsed]: Filed November 24, 1953.